HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1312 (S/S) year 2003

Khyali Ram S/o Matur Ram

Versus

State of Uttaranchal, through the Secretary

Revenue Civil Line Dehradun And others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 31.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ petition No. 1312 (S/S) 2003

Khyali Ram S/o Mathur Ram ---- Petitioner

Vs.

State of Uttarancha, through the Secretary Revenue, Civil Line, Dehradun. And Others. ---- Respondents.

Mr. B. S. Khanka, counsel for the petitioner.
Mr. B. D. Kandpal, Standing Counsel for the respondents.

Dated: October 31, 2003:

Hon'ble Rajesh Tandon, J.

Heard Sri B.S. Khanka, learned counsel for the petitioner and Sri B.D. Kandpal, learned Standing Counsel.

By means of this writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of mandamus commanding the respondents to give charge/joining to the petitioner on the post of Kanungo/Revenue Inspector according to the promotion order dated 1/2 .09.2003.

Brief facts given rise to the writ petition are that the petitioner is a senior Patwari and belongs to schedule caste category in the district Almora but he was not promoted for the post of Revenue Inspector/Kanungo. Therefore, he has filed an appeal before the Commissioner, Kumaon Mandal, Nainital on 5th June 2003. The petitioner has prayed in the appeal that he may be promoted as his juniors (Schedule Caste) have been promoted. It was stated that in the final seniority list, the number of the petitioners were 125 and for the promotion 18% reservation was given to the Schedule Caste candidates. The petitioner, therefore, is entitled for the promotion.

On appeal filed by the petitioner a fresh seniority list was prepared, vide order dated 1/2nd September 2003 passed by the District Magistrate, Almora.

There are 17 posts of Patwari/ Revenue Inspector/Kanungo according to the seniority list, which has been filed by way of annexure-4 to the writ petition.

Both the parties have agreed that in the light of the order dated 1/2nd of September 2003 direction may be given for deciding the representation of the petitioner so far as the joining of the petitioner on the promotional post is concerned.

Learned counsel for the petitioner has argued that the petitioner has already handed over the charge of Patwari Range Mashi, Almora to the Patwari Incharge Setapani on 16.09.2003 in pursuance of the order of Tehsildar Bhikiyasain dated 12.09.2003. On 16th September 2003, the petitioner has been asked to join the post of Kanungo in pursuance of the order dated 1/2nd September 2003 annexed-4 to the writ petition.

A perusal of the order of promotion shows that the petitioner was promoted as Kanungo for a period of 89 days. The order of promotion shows that from his original post, the petitioner is promoted on the post of Revenue Inspector/Kanungo.

The petitioner has brought to the notice of the Court that due to the pendency of the Writ Petition No. 1079/2003 Madan Ram Arya, Supervisor Kanungo Vs. Commissioner Kumaon Division and others, the promotion order of the petitioner dated 1/2nd September 2003 has not been complied with as will appear from the following order:-

"महोदय, श्रीमान् जिलाधिकारी महोदय अल्मोडा के आदेश सं0 7072/सात–2002–3 दि0 2.9.2003 के विपरित मेरे द्वारा माननीय उच्च न्यायालय उत्तरॉचल नैनीताल में की गई रिट याचिका सं0 1079/एस./एस. 2003–03 दि0 18.9.2003 को माननीय न्यायमूर्ति जस्टिस पी.सी. वर्मा के न्यायालय में रिट चाचिका पर जारी आदेश के अनुसार श्रीमान जिलाधिकारी महोदय अल्मोडा के उपरोक्त आदेश सं0 7072/सात–2002–03 दि0 2.9.2003 पर माननीय उच्च न्यायालय द्वारा रोक लगा दी है। तथा यथा स्थिति का आदेश पारित किया गया है। जिसकी प्रति श्रीमान जिलाधिकारी महोदय अल्मोडा को भेजी जा रही है। अतः निवेदन के साथ उचित आदेशार्थ सेवा में प्रषित ऐसी स्थिति में मेरे द्वारा माननीय उच्च न्यायालय में अग्रिम आदेश तक चार्ज दिया जाना नहीं है। ह0 अप 22.9.2003."

A perusal of the order dated 18th September 2003 in writ petition of Madan Ram Arya, shows that the following order was passed in writ petition No. 1079(S/S) 2003 Madan Ram Arya Vs. The Commissioner Kumaun Division and others:-

"Admit.

Learned Standing counsel prays for and is allowed three weeks' time to file counter affidavit on behalf of respondents &2

Issue notice to respondent No.3.

List after three weeks.

In the meantime, the petitioner shall be given appointment if he is selected against the reserved post according to roaster. Until further orders the petitioner's status shall not be disturbed."

So far as the petitioner is concerned, the petitioner was promoted on the vacant post on the basis of his own seniority fixed by the District Magistrate on an appeal filed by the petitioner.

The petitioner bas been directed on 12th September 2003 to hand over the charge to Patwari. In pursuance thereof the petitioner has banded over the charge of Patwari but has not been accommodated in the promotional post.

Promotion is a part of Article 16 of the Constitution of India. Article 16 (1) reads as under:-

"Art. 16. (1) There shall be equality of opportunity for all citizen in matters relating to employment or appointment to any office under the State."

The petitioner has made a representation on 22.09.2003 (annexure-8 to the writ petition) but in spite of his representation, the petitioner has not been handed the charge of the promotional post.

The petitioner has argued that he is ready to join at any place suffice to observe that the petitioner will be at liberty to place his representation before the authorities.

The authorities concerned, therefore, are directed to consider the case of the petitioner so far as it relates to the joining of the promotional post of Revenue Inspector/Kanungo, if otherwise the petitioner fulfills the criteria of promotion as contained in the order of promotion dated 1/2nd September 2002.

The authorities concerned shall consider the same in accordance with law within a period of three weeks from the date of filing of the certified copy of this order.

With the aforesaid observations, the writ petition is disposed of.

There will be no order as to costs.

(Rajesh Tandon, J.)

NCM: